

# VARIATION ORDER IN LUMP SUM CONTRACT

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*Specially dedicated to Mama and Papa*  
*Thank You For Your Constant*  
*Du'a*

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## **ABSTRACT**

In this complicated industry, variation orders are part and parcel in construction contract. It is likely impossible not to have changes in completing the project either to the plans or the construction process itself. Due to its complexity in nature, these changes are inevitable in any construction project. Most construction contracts commonly include variations clauses to enable the employer's design team to vary the design and specification, including in the Lump Sum type of contract. The main criticism of the traditional Lump Sum Contract has been that, it invites a confrontational approach over disputes arising out of contract variations. Furthermore, changes in Lump Sum Contract are difficult to quantify and the owner might reject the change order request. Thus, variation issues often give rise to argument, debate and litigation. Hence, the objective of this study is to identify the issues regarding variation order in Lump Sum Contract. The scope of the study is from the legal cases reported in Lexis Malaysia in relation to variations and Lump Sum Contract. The cases were analysed in order to achieve the objective of this project report. From the cases, few legal issues of 'variation orders in Lump Sum Contract' were found. The cases then be categorized under the issues discovered earlier in the literature review. From the analysis, it can be summarized that, the most common issue contended in court is on the validity of variation claims. The second is on the establishment of the very fact of a variation itself, while the third are, on the status of "cardinal" changes, and, "the contractual" and "common law position". Last but not least, the issues on the measurement of varied work and valuation of variation orders, have also been identified in one case each respectively. Therefore, by conducting this research, the judgment made by the court on issues pertaining to variation order can be used as a reference to establish a guideline for the people in the industry so that the same problem will not be repeated in future project in Lump Sum Contract. The issues highlighted and the judgment delivered can become a lesson learned rather than opt for bringing the matter to court.

## ABSTRAK

Dalam industri yang rumit ini, perintah variasi adalah sebahagian dalam kontrak pembinaan. Ia mungkin mustahil untuk tidak mempunyai perubahan menyiapkan projek sama ada kepada pelan atau proses pembinaan itu sendiri. Oleh kerana ia rumit, perubahan ini tidak dapat dielakkan dalam apa-apa projek pembinaan. Kebanyakan kontrak pembinaan biasanya menyediakan klausa-klausa perubahan untuk membolehkan majikan dan oerunding perunding professional untuk merubah reka bentuk dan spesifikasi, termasuk kontrak jenis 'wang pukal'. Kritikan utama kontrak jenis 'wang pukal' ini, ia mengundang suatu pendekatan konfrontasi ke atas pertikaian yang timbul daripada variasi kontrak. Tambahan pula, perubahan di dalam kontrak 'wang pukal' adalah sukar untuk diukur dan kemungkinan majikan menolak permintaan perintah perubahan adalah tinggi. Oleh itu, isu-isu perubahan sering menimbulkan perdebatan, perbincangan dan tindakan undang-undang. Oleh itu, objektif kajian ini adalah untuk mengenal pasti isu-isu mengenai perintah variasi dalam kontrak jenis 'wang pukal'. Skop kajian ini adalah daripada kes-kes undang-undang yang dilaporkan di Lexis Malaysia berhubung dengan variasi dan kontrak jenis 'wang pukal'. Kes-kes telah dianalisis untuk mencapai objektif laporan projek ini. Dari kes tersebut, beberapa isu-isu undang-undang tentang variasi dalam kontrak jenis 'wang pukal' dijumpai. Kes-kes itu dikategorikan di bawah isu-isu yang ditemui lebih awal dalam kajian literatur. Daripada analisis ini, adalah dirumuskan bahawa, isu yang paling biasa diujahkan di mahkamah adalah mengenai 'kesahihan tuntutan variasi. Isu yang kedua adalah mengenai penubuhan fakta jelas daripada variasi sendiri, manakala isu ketiga adalah mengenai status "kardinal" perubahan, dan, kedudukan kontrak dan kedudukan undang-undang biasa. Akhir sekali, isu-isu mengenai pengukuran kerja pelbagai dan penilaian pelbagai tempahan, yang kedua-duanya telah dikenal pasti, satu kes masing-masing. Oleh itu, dengan menjalankan penyelidikan ini, pertimbangan yang dibuat oleh mahkamah mengenai isu-isu berkaitan dengan perintah variasi boleh dibuat sebagai rujukan untuk mewujudkan satu garis panduan untuk orang-orang dalam industri ini supaya masalah yang sama tidak berulang dalam projek masa depan dalam kontrak jenis 'wang pukal'. Isu-isu yang diketengahkan dan pertimbangan yang disampaikan diharap dapat menjadi satu pengajaran dan bukannya memilih untuk terus membawa perkara-perkara tersebut ke mahkamah.